

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 763 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

LALJI VASHRAM

Versus

BAI PRABHABEN LILADHAR THAKKAR

Appearance:

MR JR NANAVATI for Petitioner

MR PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/02/2000

ORAL JUDGEMENT

#. The present revision application has been filed by the original defendant of Regular Civil Suit No.396/79. The aforesaid suit was filed by the present respondent in the court of Civil Judge (J.D.) Junagadh. It is the case of the plaintiff that he is the owner of the suit

premises situated in Kadiyavad, Junagadh.. Defendant is the tenant of the said premises. That the suit property was purchased by the plaintiff from its original owner Gangaben and others by way of sale deed dtd.5.8.1974 and that the attornment notice was also given to the defendant. According to the plaintiff the tenant is in arrears of rent and inspite of notice he has not complied with the same. According to plaintiff she also requires suit premises for her personal bonafide use and requirement, therefore on the aforesaid ground the suit for possession was filed.

#. The defendant filed his Written Statement at Ex.12 and denied the averments made in the plaint. According to the defendant he approached the plaintiff with a request to accept the arrears of rent but he refused to accept the same. He also denied the case of the plaintiff for bonafide requirement.

#. The learned trial judge framed various issues and after hearing both the sides came to the conclusion that the plaintiff requires the suit premises for his bonafide use and occupation. Ultimately learned trial judge decreed the suit of the plaintiff on the aforesaid ground. The aforesaid decree of the trial court was challenged by the present petitioner by preferring an appeal being Regular Civil Appeal No.132/83. The learned 2nd Extra Asstt. Judge, Junagadh who heard the said appeal, allowed the same by reversing the decree of the trial court passed in Regular Civil Suit No.396/79. The appellate court remanded the matter back to the trial court with a direction to frame necessary issues with regard to comparative hardship as contemplated under Sec.13 (2) of the Bombay Rent Act. The aforesaid order of the appellate judge is impugned in this revision application.

#. I have heard the learned counsel Mr.J.R.Nanavati, as well as Mr.P.V.Hathi, for the respective parties. In my view there is no substance in this revision application. The learned appellate judge confirmed the finding of the trial court regarding the bonafide requirement of the plaintiff. The appellate court also found that the plaintiff has purchased the property in August 1974 and thereby acquired the interest after 1.1.1964. However, the trial court has not given any finding regarding the hardship and no issues were framed regarding comparative hardship hence appellate court was perfectly justified in remanding the matter back to the trial court. In that view of the matter, this revision application is not required to be entertained. The order in question is

only a remand order and the matter is at large before the trial court. In that view of the matter, I do not find any infirmity in the order of the appellate court in remanding the matter back to the trial court. It will be open for the respective parties to take all contentions before the trial court as are available in law. Since there is no merit in this revision application same is required to be dismissed. Accordingly the same is dismissed. Rule is discharged with no order as to costs.

kks